

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219556
MATTER OF: Socomet, Inc.

DATE: October 15, 1985

DIGEST:

Protest alleging that rejection of lower bid in sale of lower quality wolframite (a type of tungsten ore) was unfair in view of agency's acceptance of higher bid for slightly higher quality wolframite where price/quality differential of rejected bid is greater than that of bid accepted by the agency is denied. Agency determination of acceptable sale bid prices is a matter of business judgment which will not be reviewed by GAO absent an abuse of the discretion inherent in such judgments.

Socomet, Inc., protests the rejection of its bid to purchase wolframite (a type of tungsten ore) offered for sale under invitation for bids (IFB) No. ORES-256 issued by the General Services Administration (GSA).^{1/} GSA made a partial award under the IFB to Bomar Industries. Socomet argues that its bid offered the greatest value to the government and, in light of GSA's partial acceptance of Bomar's bid, the rejection of its bid was unfair and discriminatory.

We deny the protest.

Tungsten ores and concentrates are offered for sale by GSA on a continuing basis. Under IFB ORES-256, tungsten ore with a W03 content ("W" content refers to the amount of tungsten in the ores and concentrates) of less than 65 percent is sold on the second Thursday of each month. The usual procedure followed by GSA in evaluating bids is to

^{1/} In accordance with 4 C.F.R. § 21.11 (1985), GSA has agreed to have its protests concerning sales decided by our Office.

033478

compare the bid prices received with the world prices contained in the current London Metals Bulletin (LMB) and the latest world price published in Metals Week (MW). In addition, a survey of the industry is conducted to ascertain current market conditions as well as anticipated future trends, and the impact of the sale on the industry is considered. Under the IFB, GSA specifically reserves the right to reject any or all bids or to accept the bids for any one item or group of items determined to be in the government's best interests.

Bids were opened on July 11, 1985. Bomar submitted a bid of \$54.488 per short ton unit (STU) for 2,453.904 STUs of scheelite (another type of tungsten ore), and its offered price for seven items of wolframite ranged downward from \$51.018 per STU. Socomet's bid was for 6,500 STUs of wolframite at \$48.55 per STU to be taken from any of 13 lots listed in descending order of preference. Based on the prices contained in the LMB and MW, and due to weak market conditions, GSA decided not to accept any bids for tungsten below \$51.018 per STU. Accordingly, Bomar's bid for scheelite and its bid for wolframite at a price of \$51.018 per STU were accepted. Socomet was not awarded any of the wolframite for which it bid.

Socomet contends that it should have been awarded approximately 3,000 STUs of wolframite since its price for those items was actually superior to Bomar's if the quality of the wolframite is considered. Socomet argues that the quality differential between the wolframite awarded Bomar and the lots bid by Socomet was greater than the percentage price differential between the two bids. Socomet contends that GSA should have considered the varying quality of the wolframite in establishing the bid price it would accept and that GSA failed to treat all bidders fairly by not taking this into account.

In addition, Socomet notes that GSA has previously made an award at a relative price (price/quality) almost identical to that bid by Socomet. Finally, Socomet disagrees with GSA's assessment of the tungsten market and GSA's determination that an award would not be in the government's best interest.

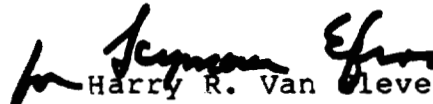
Our Office has consistently held that the determination as to whether a price is reasonable, and therefore acceptable, is primarily a business judgment for contracting officials requiring the exercise of broad discretion. Since judgment is involved, different contracting officers

may be expected to reach different conclusions even on substantially similar facts. However, this Office will not object to their findings absent a clear abuse of discretion. Metalsco, Inc., B-201130, Dec. 30, 1980, 80-2 CPD ¶ 450; Philipp Brothers, Division of Engelhard Minerals & Chemical Corp., B-197060, June 12, 1980, 80-1 CPD ¶ 412.

Under the present circumstances, we see no reason to question GSA's judgment regarding the acceptable bid price that was established. GSA compared the bid prices it received to the prices contained in the LMB and MW. Also, a market survey showed that the demand for tungsten was weak, and GSA states that its best business judgment was that this slump would reverse itself in the near future. In this respect, GSA states that the unawarded items under this IFB were later sold to Socomet and Bomar in July 1985 at \$54.525 and \$55.489 per STU, respectively.

With respect to Socomet's argument that quality should be considered in establishing an acceptable bid price, GSA states that comparative quality was considered in determining which price was most advantageous to the government. However, GSA states that its experience is that the relationship between price and quality is not a straight line as argued by Socomet. GSA states that in its judgment, Socomet's price was too low and that acceptance would have exacerbated a declining market. Under the IFB, GSA reserved the right to reject any or all bids or to accept the bid for any one item or group of items and, although Socomet disagrees with the price established by GSA, we cannot conclude that this decision constituted a clear abuse of discretion.

The protest is denied.


Harry R. Van Cleave
General Counsel